

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RUSTY EUGENE MOOTISPAW,

Petitioner,

v.

**WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,**

Respondent.

**CASE NO. 2:15-CV-02232
JUDGE GEORGE C. SMITH
MAGISTRATE JUDGE KEMP**

OPINION AND ORDER

On June 24, 2015, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that this action be **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition. (ECF No. 3.) Petitioner has filed an Objection to the Magistrate Judge's *Report and Recommendation*. (ECF No. 4.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review.

Petitioner challenges his 1981 murder conviction in the Fayette County Court of Common Pleas. He acknowledges that this is his second federal habeas corpus petition, but argues that the case would not be barred by the one-year statute of limitations under 28 U.S.C. § 2244(d), because he did not discover the nature of his claim until sometime in 2013, at which time he pursued a petition for post-conviction relief. Petitioner has attached an *Affidavit* from James A. Kiger, the former Prosecuting Attorney of Fayette County dated May 1, 2013, in support. (ECF No. 401, PageID# 40-41.)

As discussed by the Magistrate Judge, this Court is without the authority to consider a successive petition or address whether the statute of limitations bars consideration of this case absent authorization from the United States Court of Appeals for the Sixth Circuit. 28 U.S.C. § 2244.

Therefore, Petitioner's *Objection* (ECF No. 4) is **OVERRULED**. The *Report and Recommendation* (ECF No. 3) is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition.

IT IS SO ORDERED.

/s/ George C. Smith

GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT